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Shoreline Capital Management, Ltd.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JW

SHORELINE CAPITAL MANAGEMENT,
LTD., a British Virgin Islands company
limited by shares,

CV 08

0121

No.

Plaintiff,

SHORELINE CAPITAL MANAGEMENT,
LTD.'S COMPLAINT

vs.

XIAOBING SUN, an individual, also known
as DANIEL SUN,

Defendant.

1. Breach of contract
2. Misappropriation of trade secrets
3. Conversion
4. Unfair competition
5. Intentional interference with prospective economic advantage
6. Interference with contract
7. Unjust enrichment
8. Breach of duty of loyalty
9. Violation of California Penal Code §496
10. Violation of California Penal Code §502

Jury Trial Demanded

Plaintiff Shoreline Capital Management, Ltd. (Shoreline) brings the following
Complaint for injunctive relief and damages against Defendant Xiaobing "Daniel" Sun for:

- (a) Breach of non-disclosure and employment agreements Mr. Sun signed
before and at the time of his employment with Shoreline;

- 1 (b) Misappropriation of trade secrets in violation of California's Uniform
2 Trade Secrets Act, California Civil Code §3426, *et seq.*;
- 3
- 4 (c) Conversion of Shoreline's records that Mr. Sun expressly agreed were
5 Shoreline's and which Mr. Sun agreed to maintain as confidential and
6 agreed not to provide to any other person;
- 7
- 8 (d) Unfair competition in violation of California Business & Professions Code
9 §17200, *et seq.* based on Mr. Sun's misappropriation and use of
10 Shoreline's trade secret and confidential information;
- 11
- 12 (e) Intentional interference with Shoreline's prospective economic advantage
13 based on Mr. Sun's unlawful contacts with Shoreline's prospective
14 investors and vendors;
- 15
- 16 (f) Interference with contract based on Mr. Sun's unlawful contacts with
17 Shoreline's existing investors and vendors as well as in the solicitation of
18 its employees to leave Shoreline to join Mr. Sun's new competing
19 enterprise;
- 20
- 21 (g) Unjust enrichment based on benefits obtained by Mr. Sun in his new
22 competing enterprise from the unlawful use of Shoreline's trade secret and
23 confidential information;
- 24
- 25 (h) Breach of duty of loyalty based on Mr. Sun's contacts with Shoreline's
26 investors for the purpose of developing his new competing enterprise,
27 even while still employed by Shoreline, as well as on his unlawful use of
28 Shoreline's trade secret and confidential information;

1 (i) Receiving and/or concealing stolen confidential information in violation of
2 California Penal Code §496; and

3
4 (j) Unlawfully accessing Shoreline's computer network or system in violation
5 of California Penal Code §502.

6
7 JURISDICTION

8
9 1. This Court has jurisdiction under 28 U.S.C. §1332 (a), diversity of
10 citizenship. Shoreline is a British Virgin Islands company limited by shares with its principal
11 place of business in Guangzhou, China that conducts business in China through its wholly owned
12 subsidiary, Shoreline Capital Consulting (Shenzhen) Co., Ltd. (Shoreline (Shenzhen)). Shoreline
13 is a private investment firm that manages assets for institutional investors through investments in
14 distressed assets in China. All of its client investors are in the United States and some of its
15 largest client investors are in San Francisco.

16
17 2. Defendant Mr. Sun is a citizen of China though he is domiciled in this
18 District and is lawfully admitted in the United States as a permanent resident. He owns a home
19 in Newark, California where his wife and children live full time, and from which he routinely
20 conducts work.

21
22 3. The amount in controversy exceeds \$75,000, exclusive of interest and
23 costs.

24
25 VENUE

26
27 4. Venue is proper in this District because a substantial part of the events and
28 omissions on which Shoreline's claims are based occurred here. 28 U.S.C. §1391(a)(2).

FACTS

5. Shoreline has a unique business model. Its primary asset is a particular financial model (the Shoreline Pricing Model or Shoreline Debt Pricing Model) that took three and one-half years to develop, including many hundreds of hours by skilled and experienced financial people and hundreds of thousands of dollars. It has used this single model to invest over 76 million dollars in loans with principal value of 1.5 billion dollars. All of its deals are based on this financial model, which is articulated in the form of an Excel spreadsheet.

6. Shoreline employs over 25 people who work mostly in China with its wholly owned subsidiary, Shoreline (Shenzhen), but two of whom work principally in Campbell, California. Most of these employees have executed non-disclosure agreements (NDAs) and, as part of their employment agreements, have countersigned employment agreement letters. In those letters they have agreed not to resign and, within a period of two years following their departure from Shoreline, compete with Shoreline in the non-performing loan or distressed real estate investment area in China. And all of these employees have agreed to keep strictly confidential all corporate documents, files, business-secrets and know-how. What is more, all of Shoreline's employees (including Mr. Sun) have received its Employment Handbook, which requires employees to avoid conduct that could harm the company and prohibits use of Shoreline's name except when doing business for Shoreline:

Article 8: Employee Conduct: Employees should use professional judgment and avoid any conduct that violates or potentially harms the best interests of the Company. Without prior approval, employees must only use the Company's name or their titles when doing business for the Company.

1 The Employment Handbook also requires employees to maintain the
2 confidentiality of Shoreline's proprietary and trade secret information:

3
4 Article 9: Confidentiality: Employees shall follow and implement
5 the Company's confidentiality rules at all times. All information
6 obtained by employees, including, but not limited to,
7 asset/portfolio information, debtor information, asset servicing
8 strategies, debt collection status, models and forms of any kind
9 used by the Company, investment return models, evaluation
10 models and all other related information cannot be revealed to
11 persons outside the team, including any other employees within the
12 Company that are not directly related to the cases in which the
13 information is used.

14
15 (The Employment Handbook is written in Mandarin; the relevant portions above
16 have been translated for purposes of this action.)

17
18 7. Shoreline found Mr. Sun when he was a graduate student at the University
19 of Chicago and Benjamin Fanger, who is a principal of Shoreline, began to recruit him in this
20 District where Mr. Sun resided (Mr. Sun was attending weekend classes in Chicago). All
21 interviews and meetings between Mr. Sun and Shoreline during the recruiting process were
22 conducted in this District in Campbell, California. On or about January 26, 2007, while
23 Shoreline was recruiting Mr. Sun, it asked him to sign a standard NDA and he did so. The NDA
24 stated that Shoreline would provide valuable information to Mr. Sun:

25
26 [T]he Company has agreed to provide certain information to the
27 Interested Party concerning the opportunity, which information
28 includes certain confidential and proprietary information that is

1 valuable to the Company, and is the exclusive property of the
2 Company.

3
4 In exchange for receiving this valuable confidential and proprietary information,
5 Mr. Sun agreed all non-public information he received from Shoreline would be deemed
6 confidential:

7
8 All information, documents and other communications furnished
9 by the Company to the Interested Party ("Proprietary Information")
10 shall be deemed confidential. Proprietary Information shall not
11 include any information which becomes generally available to the
12 public other than as a result of disclosure by the Interested Party in
13 breach of this Agreement, information already in the Interested
14 Party's possession or information from a source not known to be
15 bound by an Agreement.

16
17 And Mr. Sun agreed not to disclose any confidential information he received:

18
19 Unless otherwise agreed to in writing by the Company or as may
20 be required by law or legal process, neither the Interested Party nor
21 any of its affiliates or representatives will use, disclose or reveal
22 any Proprietary Information for any purpose other than in direct
23 connection with assessing the potential employment opportunity
24 with the Company.

25
26 8. While Shoreline was recruiting Mr. Sun, but after he had signed the NDA,
27 it disclosed to him the details of its financial model. This was consistent with Shoreline's normal
28 business practice; it has never knowingly shown the Shoreline Pricing Model to anyone who was

1 not first made aware that it constituted confidential and proprietary information that was not to be
2 disclosed outside Shoreline.

3
4 9. Following the recruiting process, Shoreline offered Mr. Sun a job as a
5 Portfolio Manager in Training. Its offer to him was memorialized in a March 1, 2007 letter.
6 That letter explained that Mr. Sun would be located in Shoreline's Guangzhou office with its
7 subsidiary, Shoreline (Shenzhen). It set forth the areas of business he would be expected to learn
8 and master. It specified that he would not resign to compete with Shoreline and that he would
9 keep confidential the company's proprietary and trade secret information:

10
11 You hereby also agree to not resign to compete or work for any
12 competitor involved in non-performing loan[s] or distressed real
13 estate investment[s] in China for a period of two years following
14 your departure from Shoreline unless agreed to in writing by the
15 company. You also agree to keep strictly confidential all corporate
16 documents, files, business secrets and know-how.

17
18 Mr. Sun countersigned this letter on or about March 5, 2007 and promptly
19 delivered a copy of it to Benjamin Fanger, one of Shoreline's principals in Campbell, California.

20
21 10. Shortly after Mr. Sun executed the employment agreement letter, he began
22 working for Shoreline mostly in Guangzhou, China. In reliance on the confidentiality and non-
23 disclosure agreements Mr. Sun executed, Shoreline provided him access to Shoreline's business
24 model and the financial model on which it was based, and introduced him to its most important
25 investors in the United States as well as bankers and asset management companies in China from
26 whom Shoreline acquires loan portfolios. Shoreline also permitted Mr. Sun to become familiar
27 with Shoreline's actual and prospective asset/portfolio deals and customers in China.

1 11. Between March and August 2007, Mr. Sun worked for Shoreline. Then, in
2 August he purportedly left for vacation, though he never returned. Instead, he and another
3 Shoreline employee, Qiang Du, set up a new company in China called Asia Long Term
4 Investment, or Asia LTI, in Guangzhou, China, where Shoreline has its headquarters. Asia LTI
5 was designed to do precisely the same business as Shoreline in the distressed debt market,
6 precisely the same field in which Shoreline operates. (Mr. Du did not leave Shoreline until
7 September 2007, but began to work with Mr. Sun to set up Asia LTI before that time.)

8
9 12. Operating as Asia LTI, a company that is not yet registered to do business
10 in China, Mr. Sun and Mr. Du contacted Shoreline's investors in this District and other locations
11 in the United States as well as bankers and asset managers in China who are among Shoreline's
12 most important contacts. They also attempted to recruit employees from Shoreline to come to
13 work for Asia LTI. And when they were establishing or already operating Asia LTI, Mr. Sun
14 kept Shoreline's laptop computer that held its confidential, proprietary and trade secret
15 information.

16
17 13. Mr. Sun sent a PowerPoint presentation outlining his and Mr. Du's new
18 operation as Asia LTI to the Washington State Investment Board (the WSIB), an entity in the
19 United States that has committed 20 million dollars with Shoreline and is one of Shoreline's most
20 important customers. The PowerPoint presentation that Mr. Sun sent to the WSIB is dated
21 August 2007, showing that it was developed and used to contact Shoreline's customers even
22 while Messrs. Sun and Du were still Shoreline employees. That PowerPoint presentation shows
23 that the business model on which Asia LTI is based stems largely or entirely from Shoreline's
24 confidential and proprietary financial model and other trade secrets. It also includes a direct
25 reference to a confidential deal that Shoreline closed that bore the code name "#1233"; the
26 "Portfolio Pricing" process described in it is exactly the same as Shoreline's pricing process; it
27 includes a list of Shoreline's confidential and trade secret protected prospective asset/portfolio
28

1 investments in China; it identifies Messrs. Sun and Du as having been Portfolio Managers when
2 this was a title neither had obtained with Shoreline.

3
4 14. By e-mail and other means, Mr. Sun has solicited other Shoreline investors
5 in the United States, including Asia Alternatives in San Francisco, a fund of funds that has
6 committed to invest 15 million dollars in Shoreline's presently open fund, as well as an
7 additional 10 million dollars from the California Public Employees' Retirement System
8 (CALPERS) and others. It is one of Shoreline's most important investors. Mr. Sun also sent
9 Asia Alternatives the same Power Point presentation, described above, that he sent to WSIB.

10
11 15. Mr. Du has even arranged and conducted a meeting with Asia
12 Alternatives' employee in Beijing, China, Valerie Cooper. Mr. Sun also attempted to meet with
13 Ms. Cooper. Shoreline is informed and believes that Messrs. Sun and Du have contacted
14 numerous other investors that are connected to Shoreline.

15
16 16. Mr. Sun has attempted to recruit to Asia LTI some of Shoreline's key
17 employees in China. He has even tried to recruit Mr. Fanger to come to work at Asia LTI. In the
18 course of trying to induce Mr. Fanger to come to work for Asia LTI, Mr. Sun sent Mr. Fanger an
19 Excel spreadsheet that purported to articulate Asia LTI's financial model. It was identical to the
20 confidential and proprietary Shoreline Pricing Model, except that on the cover page Mr. Sun
21 deleted Shoreline's name and added Asia LTI.

22
23 17. Shoreline is presently in the process of closing a fund. As it heads for a
24 first closing in January 2008 and further closings in February and March 2008, Mr. Sun's and
25 Asia LTI's contacts with Shoreline's investors and dissemination of Shoreline's trade secrets and
26 confidential and proprietary information, as well as its solicitations of its investors based on
27 Shoreline's financial model are interfering with Shoreline's ability to complete this important
28 business.

- 1 (a) Theft by a competitor of its confidential and trade secret information,
2 including particularly its financial model, the very core of its business
3 operation;
4
- 5 (b) The loss of confidentiality of its confidential and trade secret information,
6 including its financial model and a list of prospective asset/portfolio deals;
7
- 8 (c) The loss of Shoreline's express contractual right not to have Mr. Sun leave
9 Shoreline and enter into competition with it in precisely the same field and
10 geographic market;
11
- 12 (d) The loss of an incalculable amount of future patronage from investors in
13 the United States who, as a result of solicitations from Mr. Sun and Asia
14 LTI, will elect to do business with that firm instead of with Shoreline;
15
- 16 (e) The loss of an incalculable amount of future patronage from banks and
17 asset management companies in China from whom Shoreline acquires its
18 loan portfolios;
19
- 20 (f) The loss of the full and fair opportunity to compete with Mr. Sun and Asia
21 LTI, in view of Mr. Sun's and Asia LTI's solicitations of Shoreline's
22 investors, bankers and asset management company contacts, all on the
23 basis of the Shoreline Pricing Model;
24
- 25 (g) Damage to the stability of Shoreline's offices and operations both in China
26 and the United States, and a threatened future loss of personnel if it
27 became apparent that Shoreline's NDAs and employment agreements, like
28 those it entered into with Mr. Sun, will not be enforced; and

1 (h) Risks to the security and integrity of Shoreline's computer system if Mr.
2 Sun or anyone from Asia LTI gained further unauthorized access to it.
3

4 In view of these and other considerations, Shoreline has no adequate remedy at
5 law.
6

7 21. A balancing of the equities favors the issuance of an injunction in favor of
8 Shoreline. The injunctive relief it seeks would do no more than require Mr. Sun to adhere to his
9 agreements with Shoreline which he entered into when he was recruited by and when he began
10 his employment with Shoreline. The commitments and promises he made in those agreements
11 permitted him to have access to Shoreline's confidential and proprietary trade secret information,
12 particularly its financial model; had he not executed those agreements, he would not have gained
13 access to that information and material.
14

15 22. Though Mr. Sun's prior career was not in investment management,
16 Shoreline does not seek to keep Mr. Sun from working in the financial industry in the United
17 States, China or anywhere else. It does, however, seek to prevent him from using its confidential
18 and proprietary trade secret information as a basis upon which to develop his unregistered
19 enterprise, Asia LTI, and from obtaining the patronage of Shoreline's customers and vendors in
20 the same highly specialized financial area through the use of the Shoreline Pricing Model and
21 other confidential and proprietary information that belongs to Shoreline.
22

23 23. Mr. Sun has deliberately chosen to disregard his agreements with
24 Shoreline as well as its policies as set forth in the relevant terms of its Employment Handbook,
25 and to engage in other actionable conduct. He has misappropriated Shoreline's information and
26 materials, he has arranged meetings with its customers on the pretext that he was still employed
27 by Shoreline, he has solicited its employees in the United States and China, and he has obtained
28 unauthorized access to Shoreline's computer system. Having hired Mr. Sun to work in the

1 specific field of investing in distressed debt in China, having trained Mr. Sun to work in that
2 field, and having revealed to him the materials and information that enable that business – which
3 Shoreline’s principals spent considerable resources and years to develop – it would be unjust and
4 inequitable for Mr. Sun to continue to benefit from his deliberate disregard of his contractual and
5 legal obligations.

6
7 24. In addition, permitting Mr. Sun to profit from his breach of the agreements
8 he entered into with Shoreline would encourage other Shoreline employees, who have signed
9 similar or identical agreements, to disregard the obligations set forth in those agreements with
10 impunity. Such employees would have an incentive to use Shoreline’s confidential and
11 proprietary information to compete with Shoreline to its detriment and to their advantage.

12
13 COUNT 1: BREACH OF CONTRACT
14

15 25. Shoreline incorporates by this reference each and every allegation in
16 paragraphs 1 through 24, above, as though set forth fully here.

17
18 26. Mr. Sun has violated, and continues to violate, the NDA he signed in
19 January 2007 and the employment agreement letter he countersigned in March 2007 in the
20 manner described above.

21
22 27. Shoreline has performed all of its obligations under the NDA and the
23 employment agreement letter.

24
25 28. As a direct and proximate result of Mr. Sun’s breach of the NDA and
26 employment agreement letter, Shoreline has suffered and will continue to suffer the irreparable
27 harm described above. Shoreline is therefore entitled to temporary, preliminary and permanent
28 injunctive relief.

1
2 29. As a direct and proximate result of Mr. Sun's breach of the NDA and
3 employment agreement letter, Shoreline has suffered and will continue to suffer damages in an
4 amount that will be proved at trial.

5
6 Therefore, Shoreline demands relief as set forth below.

7
8 COUNT 2: MISAPPROPRIATION OF TRADE SECRETS
9

10 30. Shoreline incorporates by this reference each and every allegation in
11 paragraphs 1 through 29, above, as though set forth fully here.

12
13 31. In the course of its business operations and at great expense, Shoreline has
14 developed its financial model and other confidential and proprietary information and materials.
15 It derives economic value from having these matters remain unknown to the public or to others
16 who could obtain economic benefit from their disclosure or use.

17
18 32. Shoreline has made reasonable efforts to maintain the secrecy of its
19 confidential information, including by entering into NDAs and employment agreements with its
20 prospective employees, current employees, and others who might come into contact with such
21 information, and by making clear as part of its employment manuals that such information is
22 valuable and to be treated as confidential. Shoreline has safeguarded its confidential materials
23 and information from disclosure in public documents, or through other means that might cause it
24 to be revealed to the public at large.

25
26 33. Without authorization Mr. Sun has taken from Shoreline a copy of its
27 financial model as well as other confidential information, including but not limited to a list of
28 Shoreline's prospective investment opportunities, all of which he obtained as a result of his

1 employment with Shoreline. Mr. Sun took this information in documentary and computer-
2 accessible form, and has used this information to establish a competing enterprise, to contact and
3 solicit Shoreline's customers, vendors and employees as described above. Mr. Sun has engaged
4 in the unauthorized use of this information and these materials after acquiring them by improper
5 means, or, at the time of using them, he knew or had reason to know that they had been acquired
6 under circumstances giving rise to a duty to maintain them in secrecy or limit their use. Mr. Sun
7 presented these materials to Shoreline's client investors as if they were his own.

8
9 34. Mr. Sun's conduct constitutes a misappropriation of trade secret in
10 violation of the California Uniform Trade Secret Act, California Civil Code §3426, *et seq.* and
11 California common law.

12
13 35. As a direct and proximate result of Mr. Sun's actions, Shoreline has been
14 damaged, and Mr. Sun has been unjustly enriched, in an amount that will be proved at trial.
15 Shoreline is entitled to recover damages at trial, and to obtain temporary, preliminary and
16 injunctive relief pursuant to California Civil Code §§ 3426.2 and 3426.3.

17
18 36. Because Mr. Sun's actions were willful and malicious, pursuant to
19 California Civil Code §3426.3 and other applicable law, Shoreline is entitled to recover
20 exemplary and punitive damages in an amount no less than double the damages done to it, in
21 order to punish Mr. Sun for his wrongful behavior and to deter others from engaging in similar
22 misconduct.

23
24 37. If neither damages nor unjust enrichment caused by Mr. Sun's
25 misappropriation are provable, Shoreline is entitled to payment of a reasonable royalty.

1 38. Shoreline alleges that because Mr. Sun's misappropriation was willful and
2 malicious, it is further entitled to recover its attorneys' fees in this matter under California Civil
3 Code §3426.4 and other applicable law.

4
5 Therefore, Shoreline demands relief as set forth below.

6
7 COUNT 3: CONVERSION
8

9 39. Shoreline incorporates by this reference each and every allegation in
10 paragraphs 1 through 38, above, as though set forth fully here.

11
12 40. At all relevant times, Shoreline was, and still is, the owner of its
13 confidential information, particularly including the Shoreline Pricing Model and the list of its
14 prospective asset/portfolio investments, all of which is valuable and necessary for the conduct of
15 its business. This confidential information has also been valuable to Mr. Sun. The value of the
16 confidential information, indeed of the Shoreline Pricing Model alone, exceeds \$75,000.

17
18 41. At some time after he began working for Shoreline and before he
19 established Asia LTI, and without authorization, Mr. Sun intended to and did take Shoreline's
20 confidential information, including specifically a copy the Shoreline Pricing Model and a list of
21 Shoreline's prospective investment deals, and converted them for his own use outside of
22 Shoreline's business. Since then, he has derived great economic value from it.

23
24 42. As a direct and proximate result of each conversion, Shoreline has suffered
25 damages in an amount or in amounts to be proved at trial. Mr. Sun has been unjustly enriched by
26 each conversion, also in an amount or in amounts to be proved at trial.

1 43. Because Mr. Sun converted Shoreline's confidential information willfully
2 and maliciously and with an intent to injure Shoreline and unlawfully obtain benefit for himself,
3 Shoreline is entitled to punitive damages under California Civil Code §3294.

4
5 Therefore, Shoreline demands relief as set forth below.

6
7 COUNT 4: UNFAIR COMPETITION
8

9 44. Shoreline incorporates by this reference each and every allegation in
10 paragraphs 1 through 43, above, as though set forth fully here.

11
12 45. The conduct described above, including but not limited to the improper
13 contact and solicitation of Shoreline's investors and customers, and the misappropriation and use
14 of Shoreline's confidential information, particularly the Shoreline Pricing Model and a list of its
15 prospective asset/portfolio investments, constitutes unfair competition under California Business
16 & Professions Code §17200, *et seq.* Said conduct is continuing.

17
18 46. As a direct and proximate result of Mr. Sun's unlawful business practices,
19 Shoreline has suffered irreparable harm and will continue to suffer irreparable injury that cannot
20 be adequately remedied at law. Therefore, Mr. Sun and all persons acting in concert with him or
21 under his direction or control must be enjoined from engaging in further unlawful business
22 practices.

23
24 47. As a direct and proximate result of Mr. Sun's conduct as alleged above, he
25 has been unjustly enriched. Shoreline is therefore entitled to restitution damages as disgorgement
26 of any profits he received as a result of said conduct, which he holds in constructive trust for
27 Shoreline's benefit. Shoreline is also entitled to an order enjoining Mr. Sun from using,
28 disposing of, wasting or in any other respect dissipating any and all of the proceeds directly or

1 indirectly traceable to his misconduct and which he holds in constructive trust for Shoreline's
2 benefit.

3
4 Therefore, Shoreline demands relief as set forth below.

5
6 COUNT 5: INTENTIONAL INTERFERENCE WITH PROSPECTIVE
7 ECONOMIC ADVANTAGE
8

9 48. Shoreline incorporates by this reference each and every allegation in
10 paragraphs 1 through 47, above, as though set forth fully here.
11

12 49. Shoreline has longstanding and profitable business relationships with
13 customers whom Mr. Sun has solicited for his own economic advantage. Because of the nature
14 of these relationships, Shoreline has had a reasonable expectation that these relationships would
15 continue to exist, with immediate and continuing benefit to Shoreline, including the likelihood
16 that past relationships would result in repeat business and referrals of new business.
17

18 50. Mr. Sun has knowledge of and intentionally and wrongfully interfered
19 with and has disrupted the relationships described above, and Shoreline's consequent reasonable
20 expectations of immediate and continuing economic benefits, by engaging in the conduct alleged
21 above, including, but not limited to, the improper contact and solicitation of Shoreline's investors
22 and customers, and misappropriating, disclosing and using Shoreline's confidential information,
23 particularly the Shoreline Pricing Model and a list of its prospective asset/portfolio investments,
24 as a basis for a new enterprise that competes with Shoreline and for the business of Shoreline's
25 customers.
26

27 51. Mr. Sun's conduct was not privileged.
28

1 52. As a direct and proximate result of Mr. Sun's actions, Shoreline has been
2 damaged in an amount to be proved at trial.

3
4 53. As a direct and proximate result of Mr. Sun's conduct alleged above,
5 Shoreline has suffered irreparable harm and will continue to suffer irreparable injury that cannot
6 be adequately remedied at law unless Mr. Sun, and all persons acting in concert with him or
7 under his direction or control, are enjoined from engaging in further similar misconduct.

8
9 54. Mr. Sun's conduct as alleged above was willful and undertaken with
10 malice and an intent to injure Shoreline and unlawfully benefit Mr. Sun. Shoreline is therefore
11 entitled to punitive damages under California Civil Code §3294.

12
13 Therefore, Shoreline demands relief as set forth below.

14
15 COUNT 6: INTERFERENCE WITH CONTRACT

16
17 55. Shoreline incorporates by this reference each and every allegation in
18 paragraphs 1 through 54, above, as though set forth fully here.

19
20 56. Shoreline has longstanding and profitable business relationships with
21 customers whom Mr. Sun has solicited for his own economic advantage. In several cases where
22 Shoreline has received commitments for investments in its currently open fund, or where it has
23 already received investment monies for that fund, Mr. Sun has contacted those investors and
24 attempted to cause them to invest through his new company, Asia LTI. These contacts have
25 interfered with Shoreline's existing business contracts: each of these investors expressed to
26 Shoreline concerns about the stability of Shoreline's team. Furthermore, Mr. Sun has interfered
27 with Shoreline's contracts with its employees by soliciting numerous Shoreline employees to
28 leave Shoreline and join Asia LTI.

1 57. Mr. Sun has knowledge of and intentionally and wrongfully interfered
2 with and has disrupted the relationships described above, and Shoreline's consequent reasonable
3 expectations of immediate and continuing economic benefits, by engaging in the conduct alleged
4 above, including, but not limited to, misappropriating, disclosing and using Shoreline's
5 confidential information, particularly its financial model and a list of its prospective
6 asset/portfolio investments, as a basis for a new enterprise that competes with Shoreline and for
7 the business of Shoreline's customers. Mr. Sun has also used that information to cause
8 Shoreline's customers to ask questions about Shoreline's presently open fund.

9
10 58. Mr. Sun's conduct was not privileged.

11
12 59. As a direct and proximate result of Mr. Sun's actions, Shoreline has been
13 damaged in an amount to be proved at trial.

14
15 60. As a direct and proximate result of Mr. Sun's conduct alleged above,
16 Shoreline has suffered irreparable harm and will continue to suffer irreparable injury that cannot
17 be adequately remedied at law unless Mr. Sun and all persons acting in concert with him or under
18 his direction or control, are enjoined from engaging in further similar misconduct.

19
20 61. Mr. Sun's conduct as alleged above was willful and undertaken with
21 malice and an intent to injure Shoreline and unlawfully benefit Mr. Sun. Shoreline is therefore
22 entitled to punitive damages under California Civil Code §3294.

23
24 Therefore, Shoreline demands relief as set forth below.
25
26
27
28

COUNT 7: UNJUST ENRICHMENT

62. Shoreline incorporates by this reference each and every allegation in paragraphs 1 through 61, above, as though set forth fully here.

63. While employed at Shoreline, Mr. Sun had access to Shoreline's confidential information. He and Shoreline had entered into agreements that while Mr. Sun was employed by it, and afterwards, he would not misappropriate its confidential information. Mr. Sun breached his obligation to Shoreline and stole its confidential information for his own use and benefit.

64. Mr. Sun has derived economic benefit from his wrongful acquisition of Shoreline's confidential information.

65. As a direct and proximate result of Mr. Sun's conduct as alleged above, Mr. Sun has been unjustly enriched by having taken advantage of and having benefitted from the retention, knowledge and use of the confidential information. Shoreline is therefore entitled to restitution damages as disgorgement of any profits received by Mr. Sun as a result of his conduct, which he holds in constructive trust for Shoreline's benefit. Shoreline is also entitled to an order enjoining Mr. Sun from using, disposing of, wasting or in any other respect dissipating any and all of the proceeds directly or indirectly traceable to his misconduct and which he holds in constructive trust for Shoreline.

Therefore, Shoreline demands relief as set forth below.

COUNT 8: BREACH OF DUTY OF LOYALTY

66. Shoreline incorporates by this reference each and every allegation in paragraphs 1 through 65, above, as though set forth fully here.

67. At all times during his employment with Shoreline, Mr. Sun owed it a duty of complete loyalty, was obligated to act solely and exclusively in its best interests, and was prohibited from acting in a manner contrary to its legitimate business interests. This duty was expressly set forth in Shoreline's Employment Handbook, which Mr. Sun received and the contents of which Mr. Sun was responsible to be familiar with.

68. By misappropriating Shoreline's confidential information, and using that information to establish Asia LTI and to contact and solicit Shoreline's customers, vendors and employees, Mr. Sun breached his duty of loyalty to Shoreline.

69. On information and belief, Mr. Sun made secret plans with others, including Mr. Du, to deprive Shoreline of its confidential information as well as its customers, vendors and employees, even while he was still an employee of Shoreline. In so doing, he breached his duty of loyalty to Shoreline.

70. As a direct and proximate result of Mr. Sun's breach of his duties as alleged above, Shoreline has suffered and will continue to suffer irreparable injury and financial losses in amounts that will be proved at the time of trial.

Therefore, Shoreline demands relief as set forth below.

COUNT 9: RECEIVING AND/OR CONCEALING STOLEN CONFIDENTIAL
INFORMATION IN VIOLATION OF CALIFORNIA PENAL CODE §496

71. Shoreline incorporates by this reference each and every allegation in paragraphs 1 through 70, above, as though set forth fully here.

72. Shoreline is informed and believes that Mr. Sun may have received some of the confidential information he used to establish Asia LTI from Mr. Du or others formerly or presently affiliated with Shoreline. Mr. Sun also improperly took, held, and copied computer files from Shoreline's laptop after he left Shoreline's employment. In each case, Mr. Sun received such information knowing that it had been purloined from Shoreline.

73. Notwithstanding his knowledge that the information had been stolen and purloined from Shoreline, Mr. Sun accepted the information, concealed it, and made advantageous use of it in violation of California Penal Code §496(a).

74. As a direct and proximate result of Mr. Sun's knowing acceptance of stolen and purloined confidential information, and of his concealing of it, Shoreline has been damaged in an amount to be proved at trial.

75. Pursuant to Penal Code §496(c), Shoreline is entitled to receive three times the amount of its actual damages as alleged above, together with costs of suit and reasonable attorneys' fees.

Therefore, Shoreline demands relief as set forth below.

COUNT 10: UNLAWFULLY USING SHORELINE'S COMPUTER NETWORK OR SYSTEM
IN VIOLATION OF CALIFORNIA PENAL CODE §502

76. Shoreline incorporates by this reference each and every allegation in paragraphs 1 through 75, above, as though set forth fully here.

77. Mr. Sun knowingly, wilfully and without permission accessed Shoreline's computer system, networks and databases, including but not limited to his unauthorized taking, holding and copying of computer files from Shoreline's laptop computer after he left Shoreline's employment, and in so doing obtained its confidential information, and he did so to control Shoreline's property and data, in violation of California Penal Code §502 (c)(1).

78. Mr. Sun also knowingly accessed and without permission stole, copied and made use of Shoreline's confidential information from Shoreline's computer systems, networks and databases, in violation of California Penal Code §502 (c)(2).

79. Mr. Sun also knowingly and without permission accessed Shoreline's computers, computer systems and computer materials, all in violation of California Penal Code §502 (c)(7).

80. As a direct and proximate result of Mr. Sun's conduct as alleged above, Shoreline has been damaged in an amount to be proved at trial.

81. In doing the things set forth above, and in violating California Penal Code §502 (c), Mr. Sun was and is guilty of oppression and malice toward Shoreline as defined under California Civil Code §3294, and, under Penal Code §502(e)(4), Shoreline is entitled to punitive and exemplary damages against Mr. Sun as a means of punishing him and deterring others from similar conduct in the future.

Therefore, Shoreline demands relief as set forth below.

PRAYER

Shoreline prays for judgment as follows:

On The First Count For Breach of Contract:

1. For temporary, preliminary and permanent injunctive relief prohibiting Mr. Sun and any person or entity working in concert with him or under his control or direction from using or maintaining any of the confidential information he wrongfully obtained from Shoreline;
2. For monetary damages according to proof;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court deems just and proper.

On The Second Count For Misappropriation of Trade Secrets:

1. For temporary, preliminary and permanent injunctive relief prohibiting Mr. Sun and any person or entity working in concert with him or under his control or direction from using or maintaining any of the confidential information he misappropriated from Shoreline;
2. For restitution of any amount by which Mr. Sun was unjustly enriched;
3. For a reasonable royalty;
4. For attorneys' fees;
5. For pre-judgment and post-judgment interest;
6. For costs of suit; and
7. For such other and further relief as the Court deems just and proper.

On The Third Count For Conversion:

1. For restitution of any amount by which Mr. Sun was unjustly enriched;
2. For monetary damages according to proof;
3. For pre-judgment and post-judgment interest;
4. For punitive damages;
5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

On The Fourth Count For Unfair Competition:

1. For temporary, preliminary and permanent injunctive relief prohibiting Mr. Sun and any person or entity working in concert with him or under his control or direction from using or maintaining any of the confidential information he misappropriated from Shoreline;
2. For restitution of any amount by which Mr. Sun was unjustly enriched;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court deems just and proper.

On The Fifth Count For Interference With Prospective Economic Advantage:

1. For temporary, preliminary and permanent injunctive relief prohibiting Mr. Sun and any person or entity working in concert with him or under his control or direction from using or maintaining any of the confidential information he misappropriated from Shoreline;
2. For damages according to proof;
3. For pre-judgment and post-judgment interest;
4. For punitive damages;
5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

On The Sixth Count For Interference With Contract:

1. For temporary, preliminary and permanent injunctive relief prohibiting Mr. Sun and any person or entity working in concert with him or under his control or direction from using or maintaining any of the confidential information he misappropriated from Shoreline;
2. For damages according to proof;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court deems just and proper.

On The Seventh Count For Unjust Enrichment:

1. For restitution damages as disgorgement of any profits received by Mr. Sun as a result of his conduct, which he holds in constructive trust for Shoreline's benefit;
2. For an order enjoining Mr. Sun and any person or entity working in concert with him or under his control or direction from using, disposing of, wasting or in any other respect dissipating any and all of the proceeds directly or indirectly traceable to his misconduct and which he holds in constructive trust for Shoreline.
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court deems just and proper.

On The Eighth Count For Breach of Duty of Loyalty:

1. For damages according to proof;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court deems just and proper.

On The Ninth Count For Violating Penal Code §496:

1. For treble damages according to proof;
2. For attorneys' fees;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court deems just and proper.

On The Tenth Count For Violation of Penal Code §502:

1. For punitive damages;
2. For pre-judgment and post-judgment interest;
3. For costs of suit; and
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Shoreline demands a trial by jury.

DATED: January 8, 2008.

COMMINS & WEBSTER
Professional Corporation

By:


David H.S. Commins
Attorneys for Plaintiff
Shoreline Capital Management, Ltd.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Shoreline Capital Management, Ltd.	DEFENDANTS Xiaobing Sun, an individual, also known as Daniel Sun
(b) County of Residence of First Listed Plaintiff <u>British Virgin Islands</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>	County of Residence of First Listed Defendant <u>Alameda</u> <small>(IN U.S. PLAINTIFF CASES ONLY)</small>
(c) Attorney's (Firm Name, Address, and Telephone Number) Commins & Webster, P.C. (415) 391-6490	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input checked="" type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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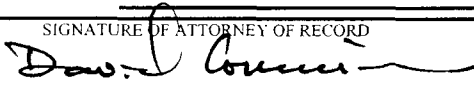
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 119 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. Section 1332 (a)</u> Brief description of cause: <u>Misappropriation of trade secrets</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY (See instructions):	JUDGE _____ DOCKET NUMBER _____
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DATE 01/08/2008	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____